A

ARBAINAH OTHMAN

v.

CIMB BANK BHD

B

HIGH COURT MALAYA, MUAR
UMI KALTHUM ABD MAJID JC
[ORIGINATING MOTION NO: 25-21-2009]
11 MARCH 2010

C ***LAND LAW:*** *Sale of land - Public auction - Appeal against reserve price fixed by Land Administrator for property set for auction - Criteria and factors to be considered - Valuation reports*

This was an appeal by the appellant against the reserve price of RM150,000 fixed by the Land Administrator, District of Batu Pahat, D in respect of a public auction of a piece of land together with a shop house ('said property'). It was the appellant's contention that the reserve price of the said property, based on the valuation report of its valuer dated 20 July 2009, should be RM300,000. The respondent's reserve price of RM150,000 was based on its valuer's E valuation report dated 10 May 2007. The respondent then produced another valuation report dated 7 September 2009 by another valuer whereby the market value of the said property was assessed at RM160,000. The only issue requiring determination was the reserve price for the said property. F

Held (allowing the appeal):

(1) Bearing in mind the criteria spelt out in the Federal Court case of *Ng Tiou Hong v. Collector of Land Revenue, Gombak* and after G careful study of the appellant's and respondent's valuers' valuation reports, it was apparent that the respondent's latest valuer's valuation report was the more reliable report. This was because it had cited a recent comparable sale of a property (PTD 8562, 163.504 square meters) situated along the same H road as the said property on 18 May 2009 for the sum of RM200,000. It must be noted that this sale price was for a non-Bumiputra and renovated unit. This comparable was then compared with other comparables in the respondent's earlier valuer's valuation report, especially one non-Bumiputra lot I (PTD 8553, 163.50 square meters) which was also located along

the same road as the said property and sold for RM170,000 on 14 October 2003. Therefore, this court was of the view that the appropriate reserve price was RM170,000, in view of the fact that the said property was a Bumiputra lot and the date of the enquiry was on 28 May 2009, that is, six years after the sale of PTD 8553. In coming to that reserve price, this court took into account the appellant's valuer's valuation report, which totally ignored the two sales within the vicinity of the said property. That report instead took into account sales of double-storey, intermediate shophouses in different areas in Batu Pahat. Moreover, even though the dates of the sales were on 17 September 2008, 17 September 2007 and 16 March 2006 respectively, no mention was made about these comparables being Bumiputra or non-Bumiputra lots. As such, these comparables could not be relied upon. *Ng Tiou Hong v. Collector of Land Revenue, Gombak* (foll). (para 9)

Case(s) referred to:
Ng Tiou Hong v. Collector of Land Revenue, Gombak [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 289 FC ***(foll)***

Legislation referred to:
National Land Code, ss. 257(1)(d), 263(2)(d), 418
Rules of the High Court 1980, O. 31 r. 2(4)(c), O. 55 r. 13(1)

For the appellant - Manian K Marappan; M/s Manian K Marappan & Co
For the respondent - M/s A Rahim & Co

Reported by Suresh Nathan

JUDGMENT

Umi Kalthum Abd Majid JC:

Motion

[1] This is a motion filed by the appellant under s. 418 of the National Land Code 1965 ("NLC") read together with O. 55 r. 13(1) of the Rules of the High Court 1980 ("RHC") appealing against the reserve price of RM150,000 fixed by the Land Administrator, District of Batu Pahat ("Land Administrator") in respect of a public auction of a piece of land referred to as HS (M) 4330, PTD 8554, Mukim Sri Gading, District of Batu Pahat, Johor

A together with a shop house at an address bearing No. 17, Jalan Bina 3, Taman Parit Raja, 86400 Batu Pahat, Johor ("said property"). The appellant had also prayed for the public auction fixed on 7 October 2009 by the Land Administrator be stayed to a date to be fixed by the court.

B

Brief Facts

[2] The appellant is the registered owner of the said property. The Land Administrator had fixed 28 May 2009 for the enquiry into the application by the respondent for an order for sale of the C said property. The enquiry was held at the District of Batu Pahat Land Office. The appellant's counsel was present at the enquiry. After the enquiry, the Land Administrator had on the same day issued an order for the said property to be auctioned on 7 October 2009 with a reserve price of RM150,000 (see exh. "ABO1", D appellant's affidavit in support, encl. 3).

[3] During the enquiry the counsel for the appellant did not at any time request for a postponement of the enquiry in order for the appellant to forward her valuation report. Instead the counsel for E the appellant had agreed with the said Land Administrator's order (para. 4, respondent's affidavit in reply, encl. 5).

The Appeal

F **[4]** The only issue the appellant is appealing is on the reserve price of the said property. It is the appellant's contention that the reserve price of the said property should be at RM300,000, being the market value pursuant to s. 257(1)(d) of the National Land Code 1965 ('NLC'). The appellant's reserve price is based on the G valuation report of Nilai Harta Consultant Sdn. Bhd. dated 20 July 2009 – see exh. "ABO2", appellant's affidavit in support, encl. 3.

[5] The respondent's reserve price of RM150,000 is based on a valuation report of JB Jurunilai Bersekutu (Johor) Sdn. Bhd dated 10 May 2007 – see exh. "ABO3", encl. 3. The respondent now has H produced a valuation report of JS Valuers Property Consultant (Johore) Sdn. Bhd. dated 7 September 2009 (exh. "HGB1", respondent's affidavit in reply, encl. 5) whereby the market value is assessed at RM160,000.

I

[6] It is submitted by counsel for the appellant that the reserve price fixed at RM150,000 is undervalued and urged the court to exercise its wide discretion under O. 31 r. 2(4)(c) of the RHC as well as under s. 257(1)(d) of the NLC so as to increase the reserve price to RM300,000.

[7] In the first place, the Land Administrator's order for sale in exh. "ABO1", encl. 3 was stated to have been made under s. 263 NLC. That being the case it was erroneous of the appellant's and counsel to have referred to the provisions of s. 257(1)(d) of the NLC. The correct provision should have been s. 263(2)(d) of the NLC. The relevant parts of s. 263 are as follows:

> **263. Order for sale, matters to be dealt with thereby.**
>
> (1) At the conclusion of any enquiry under section 261, the Land Administrator shall order the sale of the land ... to which the charge in question relates ...
>
> (2) Every such order shall be in Form 16H, and shall:
>
> ...
>
> (d) fix a reserve price for the purpose of the sale, being a price equal to the market value of the land ... in question as estimated by the Land Administrator;
>
> ... (emphasis added).

[8] In the Federal Court case of *Ng Tiou Hong v. Collector of Land Revenue, Gombak* [1984] 1 CLJ 350; ([1984] 1 CLJ (Rep) 289), being a land acquisition case, the Federal Court had laid down the criteria on how to derive the market value of real property. The learned Federal Court Judge Syed Agil Barakbah, delivering the judgment of the court, stated on p. 351 (pp. 291-292). As follows:

> Firstly, market value means the compensation that must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The elements of unwillingness or sentimental value on the part of the vendor to part with the land and the urgent necessity of the purchaser to buy have to be disregarded and cannot be made a basis for increasing the market value. It must be treated on the willingness of both the vendor to sell and the purchaser to buy at the market price without any element of compulsion. Secondly, the market price can be measured by a consideration of the prices of sales of similar lands

A in the neighbourhood or locality and of similar quality and positions. Thirdly, its potentialities must be taken into account. The nature of the land and the use to which it is being put at the time of acquisition have to be taken into account together with the likelihood to which it is reasonably capable of being put to use in
B the future eg, the possibility of it being used for building or other developments. Fourthly, in considering the nature of the land regard must be given as to whether its locality is within on near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve indicating a likelihood of access to be constructed in the near future, expenses
C that would likely be incurred in levelling the surface and the like. Fifthly, estimates of value by experts are undoubtedly some evidence but too much weight should not be given unless it is supported by, or coincides with, other evidence.

D ...

The safest guide is evidence of sales of similar lands of similar quality or position in the locality at or prior to the time of acquisition. The prices paid for such sales can be used as comparables subject to making allowance for all the circumstances

E ...

[9] Bearing in mind the criteria spelt out in *Ng Tiou Hong*'s case, and after careful study of the appellant's and respondent's valuers' reports (altogether three reports), I am of the view that the respondent's latest valuer's report in exh. "HGB1", encl. 5 is the
F more reliable valuer's report. This is because it has cited a recent comparable sale of PTD 8562 (163.504 square metres), Mukim Sri Gading at the address bearing No. 9 Jalan Bina 3, Taman Parit Raja, 86400 Parit Raja on 18 May 2009 for the sum of RM200,000. It must be noted that this sale price was for a non-Bumiputra and
G renovated unit. This property is the situated along the same road as appellant's said property. The appellant's said property has restriction in interest (see p. 8, exh. "HGB1", encl. 5) as follows:

Tanah yang terkandung di dalam hakmilik ini apabila sahaja
H bertukar miliknya kepada seorang Bumiputra/Syarikat Bumiputra maka tidak boleh terkemudian daripada itu dijual, dipajak atau dipindahmilk dengan apa cara sekalipun kepada orang yang bukan Bumiputra/Syarikat Bukan Bumiputra tanpa persetujuan Pihak berkuasa Negeri.

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Tanah yang terkandung di dalam hakmilik ini tidak boleh dijual atau dipindahmilik dengan apa cara sekalipun kepada Bukan Warganegara tanpa persetujuan Pihak Berkuasa Negeri.

This comparable is then compared with the earlier comparables in the earlier respondent's valuer's report in exh. ABO3, encl. 3, especially in respect of PTD 8553, which is also located along the same road as the appellant's said property with an area of 163.50 square metres (1,760 square feet). The sale of this property on 14 October 2003, being a non Bumiputra lot, was at RM170,000.

I therefore am of the view that the appropriate reserve price is RM170,000, in view of the fact that the appellant's said property is a Bumiputra lot and the date of the enquiry was on 28 May 2009, that is, six years after the sale of PTD 8553.

In coming to that reserve price, I have taken into account the appellant's valuer's report in exh. "ABO2", encl. 3, which totally ignored the two said sales within the vicinity of the appellant's said property. It instead took into account sales of double storey, intermediate shophouses in Taman Cempaka Biru and Taman Sri Indah in Batu Pahat. Moreover, even though the sales dates were on 17 September 2008, 17 September 2007 and 16 March 2006 respectively, no mention was made about these comparables being Bumiputra or non-Bumiputra lots. As such I find that these comparables cannot be relied upon.

Conclusion

[10] I therefore would allow the appellant's appeal and order that the reserve price of the said property be fixed at RM170,000 and for the Land Administrator to fix a suitable date soonest for the public auction to be held. In view of the fact that the appellant's counsel was present at the enquiry and had agreed to the reserve price fixed by the Land Administrator, which was not denied by the appellant, I order no costs in this appeal.